



Amalgamated Union of Kenya Metal Workers v Kenya Coach Industries Limited (Employment and Labour Relations Cause E506 of 2021) [2025] KEELRC 2044 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2044 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E506 OF 2021**

BOM MANANI, J

JULY 10, 2025

BETWEEN

AMALGAMATED UNION OF KENYA METAL WORKERS CLAIMANT

AND

KENYA COACH INDUSTRIES LIMITED RESPONDENT

RULING

Background

1. This is an application dated 28th November 2024 by the Claimant in which it (the Claimant) seeks an order to set aside the taxation order that was issued vide the ruling dated 15th November 2024 in respect of the Respondent's Bill of Costs dated 3rd June 2024. The Claimant contends that the Taxing Master committed an error of principle when he relied on a figure of Ksh. 54,400,294.42 as representing the value of the subject matter when it (the figure) had neither been pleaded nor awarded in the court's judgment. As such, it (the Claimant) prays that the taxation order be set aside.
2. The Respondent has opposed the reference. It contends that the Claimant approached the court through the parent suit seeking to stop an impending redundancy at the workplace. In the alternative, the Claimant prayed for an order to compel it (the Respondent) to pay the affected employees their redundancy dues in accordance with the Collective Bargaining Agreement (CBA) between the parties.
3. The Respondent contends that the redundancy dues it paid to the employees amounted to Ksh. 54,400,294.42. It refers to the exhibits it tendered in evidence to assert this fact. As such, it contends that the Taxing Master did not commit an error of principle when he took into account this figure as representing the value of the subject matter.
4. The Respondent further contends that the Claimant did not adhere to the procedure for filing a reference. It contends that the Claimant did not issue a notice of objection to the taxation as required by law. As such, it avers that the reference is incompetent and should be struck out.



Analysis

5. The Respondent has challenged the competence of the reference on the ground that the Claimant did not issue notice of objection to the taxation order before it filed the reference. According to the Respondent, the failure to issue the notice offends regulation 11 of the Advocates Remuneration Order thus rendering the reference incompetent.
6. The purpose of filing a notice of objection under the aforesaid regulation is to enable the Taxing Master to know the items in respect of which the objector wishes to contest the taxation order. This will enable the Taxing Master to provide the reasons for his decision on the contested items.
7. It has been observed that where the taxation order exhibits the reasons for the Taxing Master's decision, it is not mandatory to issue the notice of objection. As such, the objector may file the reference without the notice.
8. In *Lutere v Mwangi (Environment and Land Appeal 14 of 2019)* [2022] KEELC 15194 (KLR) (7 December 2022) (Ruling), the learned Judge quoted with approval the case of *Ahmed Nasir Abdikadir & Co Advocates v National Bank of Kenya Limited* [2006] eKLR in which it was observed as follows:-

“Although rule 11(1) of the Advocates Remuneration Order stipulates that any party who wishes to object to the decision of the taxing officer, should do so within 14 days after the said decision and thereafter file his reference within 14 days from the date of the receipt of the reasons, where the reasons for the taxation on the disputed items in the bill are already contained in the considered ruling, there is no need to seek further reasons simply because the unfortunate wording of sub rule (2) of rule 11 of the Advocates Remuneration Order demands so. The said rule was not indeed to be ritualistically observed when reasons for the disputed taxation are already contained in the formal and considered ruling..”
9. In *Republic v Public Procurement Administrative Review Board & another; Sports, Arts and Social Development (Exparte)* (Application E063 of 2021) [2023] KEHC 22514 (KLR) (Judicial Review) (25 September 2023) (Ruling), the court rejected the contention that a reference is rendered incompetent merely because it was filed before the Applicant lodged an objection to the taxation order. The court expressed itself on the matter as follows:-

“I am unable to agree with the applicant that a reference would be rendered incompetent merely because it is not preceded by an objection even in a case where the taxing master has given reasons in the initial decision on the taxation in issue.”
10. A similar view was expressed in *Samali v Mbugua & another* [2023] KEHC 26811 (KLR), where the learned Judge stated as follows:-

“Where the Applicant is not asking for the reasons for taxation on the items challenged or where reasons are in the ruling, my view is that filing of Notice of Objection is not necessary and therefore failure to file the same is not fatal to a Reference which sets out the items under challenge.”
11. In the instant reference, it is apparent that the reasons for the Taxing Master's verdict are contained in his ruling. Consequently, there was no need for the Claimant to issue the notice of objection calling for the reasons for the decision before it could file the reference. As such, the Respondent's objection to the competence of the reference on this ground fails.



12. It is now settled that a court considering a reference from a taxation order is not entitled to interfere with the Taxing Master's decision unless it is demonstrated that the Taxing Master made an error of principle whilst considering the matter. This point is made in the case of *Kipkorir, Tito & Kiara Advocates v Deposit Protection Fund Board* [2005] eKLR where the Court of Appeal observed as follows:-

“On a reference to a judge from the taxation by the Taxing Officer, the judge will not normally interfere with the exercise of discretion by the taxing officer unless the taxing officer, erred in principle in assessing the costs.”

13. In the case of *Kamunyori & Company Advocates v Development Bank Of Kenya Limited* [2015] eKLR, the court held that misapprehension of the subject matter of a suit or the value of the subject matter by a Taxing Master amounts to an error of principle. The court expressed itself on the matter as follows:-

“Failure to ascertain the correct subject matter in a suit for the purpose of taxation is an error of principle. So too, failure to ascribe the correct value to the subject matter is an error of principle.”

14. As noted earlier in the ruling, the Claimant contests the Taxing Master's decision to rely on the figure of Ksh. 54,400,294.42 as representing the value of the subject matter in the parent suit. On the other hand, the Respondent contends that the figure reflected the correct value of the subject matter in the suit.

15. Whilst rendering his view on the contested value of the subject matter, the learned Taxing Master expressed himself on the subject as follows:-

“I have considered the amount sought in the instant suit which can be ascertained from the pleadings.”

16. Having observed as above, the learned Taxing Master proceeded to tax item one (1) on instruction fees at Ksh. 1,208,005.80. He then taxed item two (2) at Ksh. 402,668.60.

17. It is imperative to mention that at the time of the taxation, this court had already rendered a judgment in the cause dismissing the Claimant's claim. As will be seen later in the ruling, this development was critical in navigating the question regarding the value of the subject matter.

18. I have scrutinized the Memorandum of Claim and noted that it does not speak to the figure of Ksh. 54,400,294.42, at least expressly. I have also looked at the Statement of Defense that was filed by the Respondent and similarly noted that it also does not speak to the aforesaid figure, at least directly.

19. It is correct as the Respondent asserts that the Claimant sought for an alternative relief of payment of redundancy dues. However, whether the above figure represents the total redundancy dues that would have been paid out to the aggrieved employees is not obvious from the Memorandum of Claim.

20. The guidelines for determining the value of the subject matter of a suit in order to determine instruction fees were spoken to in the case of *Joreth Limited v Kigano & Associates* [2002] eKLR when the court expressed itself on the matter as follows:-

“.....the value of the subject matter of a suit for the purposes of taxation of a bill of costs ought to be determined from the pleadings, judgment or settlement (if such be the case) but if the same is not so ascertainable the taxing officer is entitled to use his discretion to assess



such instruction fee as he considers just, taking into account, amongst other matters, the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings, any direction by the trial judge and all other relevant circumstances.”

21. In the case of *Peter Muthoka & another v Ochieng & 3 others* [2019] KECA 597 (KLR), the court stated that the stage at which taxation of costs is undertaken in a suit determines whether the Taxing Master should rely on the pleadings, the judgment or settlement recorded in the matter to determine the value of the subject matter. In addressing the subject, the court observed as follows:-

“It seems to us quite plain that the basis for determining subject matter value for purposes of instruction fees is wholly dependent on the stage at which the fees are being taxed. Where it happens before judgment, it is the pleadings that form the basis for determining subject value. Once judgment has been entered, and for what seems to us to be an obvious reason, recourse will not be had to the pleadings since the judgment does determine conclusively the value of the subject matter as a claim, no matter how pleaded, gets its true value as adjudged by the court.

Where, however, a suit is settled, then, from a literal and practical reading of the provision, the subject matter value must be sought by reference, in the first instance, to the terms of the settlement. Just as one would not start with the pleadings in the face of a judgment, it is indubitable that one cannot start with the pleadings where there is a settlement.”

22. The above guidelines were affirmed by the Supreme Court in the case of *Kenya Airports Authority v Otieno Ragot and Company Advocates* (Petition E011 of 2023) [2024] KESC 44 (KLR) (2 August 2024) (Judgment) (see paragraphs 55 and 56 of the decision). As such, whilst deciding on the value of the subject matter in the instant dispute, the Taxing Master was bound to follow these guidelines.
23. In my view, since the matter had already been determined on the merits at the point the Bill of Costs was filed, the Taxing Master ought to have considered the judgment and not the pleadings in arriving at his decision regarding the value of the subject matter. As the record shows, he did not. Instead, he considered the pleadings.
24. However, even assuming that the Taxing Master was entitled to resort to the pleadings to discern the value of the subject matter despite the presence of a judgment on record, I still do not think that this would have been helpful to him. This is because neither the Memorandum of Claim nor the Statement of Defense explicitly mentions the aforesaid figure as the value of the subject matter.
25. The Respondent avers that the impugned figure is what was paid out to the employees as per the documents it tendered in evidence. However, these documents do not constitute pleadings in the cause. Neither do they represent a settlement recorded in the cause between the parties. As such, it is doubtful that they could be relied on to justify the impugned figure.
26. It is correct as the Respondent contends that in the court’s judgment, it affirmed the fact that the employees had been paid their terminal dues. However, it (the court) did not go further to speak to the amount that was paid out. As such, the judgment does not mention the aforesaid figure.
27. Since the cause had been decided at the time of taxation of the Bill of Costs under consideration but the value of the subject matter could not be discerned from the judgment, the Taxing Master ought to have used his discretion to determine the instruction fees in the suit, taking into account the nature and importance of the cause or matter, the interest of the parties, the general conduct of the proceedings and all other relevant circumstances. As the record shows, he did not do so.



Determination

- 28. In the premises, I find that the Taxing Master committed an error of principle when he relied on the impugned figure of Ksh. 54,400,294.42 as representing the value of the subject matter notwithstanding that the amount could not be ascertained from the judgment on record.
- 29. As such, I set aside the Taxing Master’s decision dated 15th November 2024.
- 30. I direct that the Bill of Costs dated 28th March 2024 be placed before another Taxing Master for taxation.
- 31. Each party to bear own costs for this reference.

DATED, SIGNED AND DELIVERED ON THE 10TH JULY, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

